

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

Eastern District of Kentucky  
**FILED**

NOV 13 2007

AT LEXINGTON  
LESLIE G WHITMER  
CLERK U S DISTRICT COURT

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to 18 U.S.C. § 3006A, the Criminal Justice Act of 1964 ("CJA"), as amended, and in accordance with the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes*, Volume VII, GUIDE TO JUDICIARY POLICIES AND PROCEDURES ("CJA Guidelines"), the Judges of the United States District Court for the Eastern District of Kentucky adopt this amended plan for furnishing representation in federal court as defined by law. This CJA Plan, which addresses eligible persons in qualifying circumstances, includes the provision of counsel and investigative, expert, and other services necessary for adequate representation, all as defined in and subject to the CJA and the CJA Guidelines.

II. STATEMENT OF POLICY

A. Objectives.

1. The principal objective of this CJA Plan is to pursue the goal of equality before the law for all persons in matters addressed by the Plan. This Plan, therefore, shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived of any element of representation necessary to an effective and constitutional defense based on financial ability to afford adequate representation.

2. A second objective of the Plan, and one designed to further the principal objective, is to regulate the size and composition of the CJA Panel of Attorneys. Such regulation will insure that Panel attorneys have adequate skill and experience necessary for effective representation in

federal court, will facilitate proper training and professional development of Panel members, and will permit adequate assignment opportunities for each Panel member.

3. The Plan also seeks to articulate the requirements and policies of this District, relative to the CJA, in compliance with the Act and CJA Guidelines.

B. Compliance.

1. The Court, its Clerk, and the attorneys appointed under the CJA shall comply with the CJA, the CJA Guidelines approved by the Judicial Conference of the United States, and the terms of this Plan. The terms of the CJA, and secondarily the provisions of the CJA Guidelines, control over the terms of the CJA Plan, in the event of any conflict.

2. Each private attorney shall be provided by the Clerk of Court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain and keep current a copy of the CJA Guidelines for the use of members of the CJA Panel.

III. PROVISION OF REPRESENTATION

A. Mandatory Appointment of Counsel

Representation shall be provided in this District for any financially eligible person who:

1. is charged with a felony or a Class A misdemeanor;
2. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
3. is charged with a violation of probation, in a qualifying circumstance, or is entitled to appointment of counsel in parole proceedings;
4. is under arrest, when such representation is required by law;

5. is charged with a violation of supervised release or faces a modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
6. is subject to a mental condition hearing under Chapter 313 of Title 18, to wit: 18 U.S.C. §§ 4241-4247;
7. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or other federal law;
8. is in custody as a material witness;
9. is seeking to set aside or vacate a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255;
10. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109; or
11. faces loss of liberty in a case, and federal law requires the appointment of counsel.

B. Discretionary Appointment of Counsel

Whenever a federal judicial officer determines that the interests of justice so require, representation may be provided in this District for a financially eligible person who:

1. is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized;
2. is seeking relief, other than to set aside or vacate a death sentence, under 28 U.S.C. § 2241, 2254, or 2255;
3. is charged with civil or criminal contempt and faces a loss of liberty;
4. has been called as a witness before a grand jury, a federal court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness

could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or faces a loss of liberty;

5. the United States Attorney has proposed for processing under a pretrial diversion program;
6. is held for international extradition under Chapter 209 of Title 18, United States Code; or,
7. faces an ancillary proceeding in a circumstance for which representation under the CJA may be appropriate as provided in the CJA Guidelines.

#### IV. ADMINISTRATION OF THE CRIMINAL JUSTICE ACT

##### A. CJA Committee

1. Subject to the supervision of the Court, a CJA Committee shall oversee administration of this Plan and governance of the CJA Panel created by this Plan. The CJA Committee shall be comprised of two United States District Judges of the Court (active or senior status, as the Court deems appropriate), a United States Magistrate Judge of the Court, the Panel Representative/Resource Counsel for the District, and three (3) attorneys admitted to the bar of the Court as selected and appointed by the Court. The Court shall appoint an attorney from each of the three divisions of the Court. Although not required, it is preferred that such attorneys be members of the CJA Panel.

2. The United States District Judges, the United States Magistrate Judge, and the Panel Representative/Resource Counsel for the District shall serve on the Committee for such length of time as the Court may determine. The attorneys serving on the Committee shall be appointed for staggered three-year terms, with one attorney appointed initially for a three-year term, a second attorney appointed initially for a two-year term, and the remaining attorney appointed initially for a one-year term. All appointments following the original appointments provided in the preceding

sentence shall be for three years. Appointments to the committee are revocable at any time by a majority vote of the judges of the Court. A successor appointed during the term of his/her predecessor appointee shall serve out the term of the predecessor appointee before being appointed to a full term. Attorneys serving on the Committee may be re-appointed and may serve more than one term, as the Court deems proper.

3. The Court shall designate a District Judge on the Committee to act as the Committee's Chair, but said person may delegate functions to other members of the Committee as the Chair deems appropriate. Further, the Court may, as the CJA Committee's development and performance over time warrant, reassign the Chair position to another Committee member.

4. Subject to oversight by the Court, the Committee shall have the principal responsibility for managing the CJA Panel, including the following powers and responsibilities:

a. Reviewing and evaluating applications by attorneys for admission to the CJA Panel and making recommendations thereon to the Court.

b. Recommending whether attorneys admitted to the CJA Panel should be removed for any reason, including, but not limited to, poor service, misconduct, incompetence, mental or physical incapacity, or failure to comply with applicable training and continuing legal education requirements.

c. Recommending requirements for and planning and providing for educational and professional-training opportunities to members of the CJA Panel in accordance with principles identified by the Court.

d. Reviewing, at the request of and to assist any judicial officer, submitted payment vouchers for reasonableness and compliance with appropriate Administrative Office guidelines and/or CJA Guidelines.

e. Investigating complaints against or involving members of the CJA Panel, and recommending to the Court appropriate disciplinary sanctions, including admonition, reprimand, suspension from the CJA Panel, and/or removal from the CJA Panel.

f. Identifying, evaluating, and defining any operational difficulties encountered in the administration of the CJA Panel and making recommendations to the Court for appropriate administrative changes.

g. Recruiting members to the CJA Panel and conducting or coordinating educational programs and initiatives concerning the mission, purpose, constitutional underpinnings, and history of the Criminal Justice Act;

h. Acting as a resource for assignments or queries by the Court that may assist any of the judges on matters pertinent to the CJA Panel; and

h. Such other powers and responsibilities as are necessary and proper to the management and regulation of the CJA Panel.

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The Committee shall report annually to the Chief Judge, in the form directed by the Chief Judge, concerning the operation and effectiveness of the CJA Plan and the Committee's duties, and the Committee shall periodically review the Plan itself and make recommendations to the Court for any changes or amendments.

5. The Clerk of Court, or his or her designee, shall be an ex officio, non-voting member of the Committee. The Committee will be permitted to use the staff of the Clerk, or a designee of the Clerk or the Court, for clerical and record-keeping support.

6. Service on the Committee shall be without separate compensation, and nothing herein shall be construed as creating or vesting any right or privilege. The Court may reimburse Committee members for expenses incurred in performing reasonable and necessary duties in service to the Committee.

B. Responsibility of the Court

Although this Plan establishes the CJA Committee to exercise principal administrative responsibility for management of the CJA Plan and to advise the Court in matters concerning the CJA Panel and the District's CJA compliance, the Court retains the ultimate responsibility for management and operation of the CJA Panel, and may modify, override, or affirmatively direct action by the Committee.

V. CRIMINAL JUSTICE ACT PANEL

A. Limitation on the Size of the CJA Panel

The Committee shall, from time to time, evaluate and manage the proper size of the CJA Panel to ensure that each panel attorney receives enough appointments to maintain proficiency in federal criminal practice and that the CJA Panel is sufficient to meet the District's needs. If the Committee determines that it is necessary to reduce the size of the CJA Panel, such reduction shall first be accomplished through attrition, and only thereafter through other means as determined by the Committee. Nothing herein shall be construed as creating or vesting any right to be admitted

to or to remain a member of the CJA Panel. Membership on the CJA Panel is at the discretion of the Committee and ultimately the Court.

B. Membership of the CJA Panel

1. CJA Panel attorneys shall be members of the bar of this District. In addition to bar membership, the panel attorneys should have, in the judgment of the Committee, sufficient prior federal and/or state criminal trial experience, significant prior involvement in serious or complex criminal cases, adequate knowledge of the Sentencing Guidelines and the Bail Reform Act, and adequate knowledge of other relevant areas of criminal practice.

2. The initial CJA Panel under this Plan shall consist of each current CJA panel attorney who indicates a desire for membership on the initial CJA Panel. Upon its formation, the Committee shall consider the initial list of such CJA Panel attorneys and the number of cases the Panel will likely be required to handle, and, if necessary, shall reduce the Panel by recommendation to the Court. The Committee shall also designate appropriately qualified attorneys on the initial Panel as approved for complex cases. An attorney may apply for admission to the CJA Panel by completing an application created and published by the Committee. Additions to the CJA Panel shall consist of attorneys recommended by the Committee based on that attorney's application and any other relevant information, and thereafter approved by the Court.

C. Evaluation of the CJA Panel/Mandatory CLE

1. The Committee shall design an evaluation method that effectively gathers adequate relevant information to permit assessment of Panel members. Said method should reflect input on performance from the Court and other sources deemed appropriate by the Committee. The Committee and the Clerk shall also formulate a method for recording when any panel attorney has



refused to accept an appointment, and the reason for that refusal. Information about refusals shall be forwarded by the Clerk to the Committee.

2. The performance of each CJA Panel attorney will be evaluated formally every three (3) years by the Committee. Initially, the Committee shall evaluate one-third (1/3) of the panel after one (1) year, one-third (1/3) of the panel after two (2) years, and one-third (1/3) of the panel after three (3) years. Thereafter, one-third of the panel shall be evaluated every year. The purpose of this evaluation is to determine whether each attorney should remain a member of the CJA Panel. The Committee shall consider judicial evaluations, the attorney's compliance with the mandatory CLE requirements of this Plan, the number of cases the attorney has refused to accept during the evaluation period, the reasons for any refusal, and any other relevant information presented to or gathered in investigation by the Committee. The Committee shall provide the Court with the names of those attorneys that, in the view of the Committee, should continue as members of the CJA Panel for another three (3) year period. The Court shall consider and act on the recommendation of the Committee and issue an appropriate notice to each attorney evaluated. The responsibility for initiating this process rests with the Committee and there is no need for a panel member to reapply for appointment.

In the event the Committee perceives that an attorney should not continue as a member of the Panel, the Committee may, in advance of any recommendation to the Court, give the attorney an opportunity to respond to any deficiencies or reasons that the Committee identifies as justifying the attorney's removal. The provision of such opportunity rests in the discretion of the Committee, and no Panel member has a right to membership or any particular process in granting or withdrawing Panel membership. The judges of the Court retain full, complete, and final discretion concerning

Panel membership. The Court may direct the Committee to evaluate further its recommendation as to Panel membership.

3. To maintain continued eligibility to serve on the CJA Panel, each panel attorney shall certify to the Committee that he or she has attended at least nine (9) hours of continuing legal education every three (3) years focused on federal criminal law and procedure. Failure of an attorney to comply with this CLE requirement may result in removal from the CJA Panel. Each year, the Court will offer a full day skills seminar for CJA Panel attorneys. Each CJA Panel attorney must attend at least one (1) skills seminar every two (2) years. The hours spent at the skills seminar will apply toward the mandatory CLE requirement. In addition, and from time to time, the Committee and/or the Court will offer additional CLE for panel attorneys at various locations throughout the District. All CLE offered to panel attorneys by the Committee and/or the Court shall be free of charge.

4. Notwithstanding the requirements in any other section of this Plan, a panel attorney may be removed from the panel at any time by a majority vote of the district judges. A panel member may withdraw from consideration for prospective appointments at any time, but reinstatement to the panel shall only be with Committee approval and leave of Court.

#### D. Complex Cases

1. In its discretion, the Committee may classify certain panel attorneys as qualified for appointment to complex cases, such as death-penalty prosecutions, habeas actions, cases involving intense media or public interest, cases potentially involving difficult or unusual clients, cases involving Class A or B felonies, or other complex or difficult cases. The appointing judicial officer shall assess whether a matter qualifies as “complex” for these purposes. Attorneys approved

for complex cases may be appointed to any case, but shall be appointed as lead counsel in every complex case. In order to be considered for complex cases, an attorney shall have been licensed to practice law at least five (5) years and shall have tried to a jury at least five (5) federal criminal trials, or at least one (1) federal criminal trial and at least four (4) complex state criminal trials. Notwithstanding these minimum qualifications, an attorney may apply specially to the Committee for approval to handle complex cases by describing any special circumstances, experience, or qualifications that may justify such approval. Further, meeting the minimum qualifications does not assure eligibility to handle complex cases. Nothing herein shall be construed in any way as the basis for finding ineffective assistance of counsel.

2. In addition to the CJA Panel, the Committee shall maintain an applicant panel consisting of attorneys who have applied for, but who have not yet been granted admission to the CJA Panel. The Committee shall create and put into practice a mentoring and development program for members of the applicant panel. Participation in the mentoring program shall not be mandatory for admission to the CJA Panel, however, completion of the mentoring program shall be viewed by the Committee and the Court as a factor that substantially favors admission. CJA Panel attorneys are required to act as mentors in the mentoring program as requested by the Committee.

## VI. ASSIGNMENT OF CASES TO CJA PANEL ATTORNEYS

### A. Assignment.

Assignment of cases to CJA Panel attorneys shall be made on an even, rotating basis except where, due to the nature and/or complexity of the case, an attorney's experience, and/or geographical considerations or other relevant considerations, including exigencies of timing, a

judicial officer or the judicial officer's designee directs the appointment of a particular panel attorney.

B. Roster of Attorneys.

Under the direction of the Committee, the Clerk shall maintain a master list of CJA Panel attorneys, with notations for those attorneys approved for complex cases. There shall be a single list for the entire Eastern District of Kentucky from which case assignments will be made by the presiding judicial officer or designee.<sup>1</sup> In making appointments, the judicial officer or designee, in addition to the considerations set forth in Section VI. A., shall consider that each attorney on the panel should receive a sufficient number of appointments to maintain proficiency in federal criminal practice. The Clerk of the Court shall maintain statistics regarding the number of cases each panel attorney has handled in the preceding three (3) year period, and these statistics shall be made available upon request to a judicial officer or designee who is considering an appointment.

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<sup>1</sup> Although one CJA Panel will exist for the District, the Committee may, in consultation with the Clerk, identify sub-panels by Court Division. Those sub-panels, by Division, would include Panel members who confirm their willingness to accept assignments for matters within the particular Division(s). A Panel member would be permitted to be listed on any number of or all sub-panels, but the Court would expect any member of a sub-panel to accept appointments made for the Division(s) for which the member is listed.

A judicial officer would be permitted to appoint from a Division sub-panel, on an even and rotating basis, but also could appoint from the general District panel if a need existed in the officer's opinion. Further, the Committee may recommend appointment processes that reflect practical differences and/or the need for autonomy across the Divisions.

C. Timely Appointment.

Consistent with the CJA Guidelines, it is the intent of the Court that panel attorneys will be assigned to a case as early as possible so as to ensure representation at the initial appearance and, when possible, representation during earlier proceedings including any pretrial interview conducted by the United States Probation Office. When the panel attorney assigned the case is unable to attend an initial appearance and/or earlier events such as the bond interview, those matters shall be attended by an "on-call" panel attorney. The Committee and Clerk shall formulate a plan to schedule on-call panel attorneys so that such an attorney is reasonably available at each court location. The responsibility of being on-call shall be shared equally among panel attorneys. In the event that the on-call panel attorney is not the panel attorney who has been or is assigned the case, the on-call panel attorney's duties shall terminate as soon as the assigned panel attorney becomes available. On-call panel attorneys shall be permitted to bill for their actual work on any case but shall not bill for the time that they are on-call, but not performing work on a case.

D. Effect of Assignment Refusal.

If a panel member has repeatedly refused assignments, the Committee shall make such further inquiry as it deems appropriate, and take such action as may be proper, including making a recommendation to the Court for removal of the member from the CJA Panel.

VII. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation Of Accused For Appointment Of Counsel.

The United States Attorney or designee or the United States Marshal or designee shall contact the Clerk of the Court and arrange to have all arrested persons promptly evaluated by a judicial officer for determination of financial eligibility and appointment of counsel.

B. Pretrial Services Interview.

1. Prior to any probation officer or pretrial services officer interviewing a person subject to proceedings under 18 U.S.C. § 3142, et. seq., the officer shall ask any person who is in custody, or who otherwise may be entitled to counsel under the Criminal Justice Act, whether he or she is financially able to secure representation. In those cases where the person says that he or she is unable to do so, the officer shall notify the person that he or she may be entitled to the appointment of a panel attorney before making any statement to the officer and thereafter a panel attorney shall be promptly assigned. If the assigned panel attorney cannot be notified immediately, or is unable to appear immediately to assist the arrested person, then the on-call panel attorney shall be promptly notified.

2. Upon completion of the pretrial services interview and at the initial appearance before the court, or sooner if practicable, the presiding judicial officer shall make such inquiries as are proper under the Criminal Justice Act, and either formally appoint a panel attorney, or relieve the panel attorney from any further representation of the arrested person. In the event a panel attorney is formally appointed by the court to represent the arrested person, the appointment shall be retroactive to the date and time the panel attorney first began assisting the person.

VIII. DETERMINATION OF NEED FOR COUNSEL

A. Counsel For Persons Appearing Without An Attorney

In every case in which a person may be eligible for appointment of counsel pursuant to 18 U.S.C. § 3006A(a)(1), the judicial officer shall advise that person that he or she has a right to be represented by counsel throughout the case and that counsel will be appointed to represent the person if so desired, if he or she qualifies financially under the CJA. Whenever the person states

that he or she is financially unable to obtain counsel and desires the appointment of counsel, the judicial officer shall make an appropriate inquiry into and thereafter make a finding as to whether the person is financially able to obtain counsel. The judicial officer then shall proceed under the CJA in accordance with the finding.

A person is “financially unable to obtain counsel,” for CJA purposes, if the person’s net financial resources and income are insufficient to enable such person to reasonably obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to (a) the cost of providing the person and his or her dependents with the necessities of life, and (b) the cost of the defendant’s bond if the court imposed a financial condition as a release predicate.

#### B. Counsel For Persons Appearing With An Attorney

When a person has been represented by counsel prior to his or her presentation before a judicial officer under circumstances where such representation is authorized by 18 U.S.C. § 3006A(a), counsel may subsequently apply to the judicial officer for retroactive approval of compensation. If an application is made to a magistrate judge, the magistrate judge shall submit a recommendation to a district judge for final approval. If the judge finds that the person has been and is then financially unable to obtain an adequate defense, and that representation was required or otherwise permitted by the CJA, compensation will be made retroactive pursuant to 18 U.S.C. § 3006A(b).

### IX. APPOINTMENT OF COUNSEL

#### A. The Judicial Officer.

1. In every case in which appointment of counsel pursuant to 18 U.S.C. § 3006A(a)(1) is appropriate, the judicial officer shall appoint counsel promptly if the officer finds

that the person is financially unable to obtain an attorney, unless the person validly waives his or her right to be represented by counsel.

2. The judicial officer shall appoint counsel from the CJA Panel, except in circumstances where, in the interest of justice, it becomes necessary in the judicial officer's discretion to appoint some other qualified counsel because of an unusual circumstance concerning timing, location, complexity, or some other factor. A judicial officer appointing counsel not from the CJA Panel shall notify the CJA Committee in writing of such act. Consideration for preserving the integrity of the panel selection process requires that such appointments be made only in exceptional circumstances. A defendant shall not have the right to select his or her appointed counsel from the CJA Panel, or otherwise.

3. Pursuant to 18 U.S.C. § 3005, a person charged with a capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. In appointing counsel in federal capital prosecutions, the Court shall consider the recommendation of the Office of Defender Services Division of the Administrative Office of the United States Courts. If, following the appointment of counsel in a case in which a defendant is charged with an offense that may be punishable by death, it is determined that the death penalty will not be sought, the Court may reconsider the question of the number of counsel needed.

4. If, at any time after the appointment of counsel, the judicial officer finds that the person is or has become financially able to obtain counsel or make partial payment for the representation, the judicial officer may terminate the appointment of counsel or recommend that any funds available to the person be ordered paid as provided in 18 U.S.C. § 3006A(f).



5. If, at any stage of a matter under 18 U.S.C. § 3006A(a), the judicial officer finds that a person is or has become financially unable to continue to pay retained counsel, the judicial officer may make an original appointment of counsel in accordance with the general procedure set forth in this Plan.

6. If a person having a right to counsel is not represented by counsel before the judicial officer and seeks to waive his or her right to have appointed counsel, the judicial officer shall make appropriate inquiry regarding such a waiver. If the person admits or the judicial officer finds that the person is financially able to obtain counsel but declines to do so, the judicial officer shall certify that fact in the record of the proceedings.

B. The Clerk

If a person having a right to counsel desires to have counsel appointed, then

(a) if no financial affidavit has been filed with the Clerk, a form affidavit shall promptly be sent to the person, to be filled out by the person and returned to the Clerk; or

(b) if the notice to the Clerk includes an affidavit of financial inability to employ counsel, the Clerk shall promptly communicate with a judicial officer for consideration of the appointment of counsel.

C. Obligation Of Counsel

1. Counsel appointed to represent a client under the Criminal Justice Act shall owe that client the same quality, skill, and loyalty of representation as privately retained counsel would provide.

2. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the Kentucky Rules of Professional Conduct,

the Joint Local Rules of Criminal Practice for the Court, and any applicable federal laws regulating attorney conduct in a matter before a federal court.

3. Counsel appointed by a judicial officer shall, unless excused by order of court, continue to act for the person throughout the proceedings in this Court. Appointed counsel is expected to appear personally at all substantive, non-routine proceedings, with substitutions or the filing of additional appearances permitted only with permission of the Court. The judicial officer before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings, with such substitutionary appointment made in accordance with the general provisions of the CJA Plan.

4. If, at any time after appointment, counsel obtains information indicating that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

5. In all criminal cases, appointed counsel shall advise the defendant of the right to appeal and of the right to counsel on appeal. If directed to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal, and shall continue to represent the defendant, unless or until relieved by the district court or the court of appeals.

6. Counsel appointed under this CJA Plan may not require, request, or accept any non-CJA Plan payment or promise of payment or other valuable consideration for representation under the appointment, unless approved by order of the court.

## X. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

Counsel (whether or not appointed under the Act) for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense in his or her case may request such services in an *ex parte* application before a judicial officer, as provided in 18 U.S.C. § 3006A(e)(1). Upon finding, after appropriate inquiry in an *ex parte* proceeding, that the services are appropriate and that the person is financially unable to obtain them, the judicial officer shall authorize counsel to obtain such services. Appointed counsel may obtain, subject to later judicial review, investigative, expert, or other services without prior authorization, pursuant to the dollar limitation set out in 18 U.S.C. § 3006A(e)(2). Counsel shall comply with all provisions regarding financial limitations and requests for services, as set forth in 18 U.S.C. § 3006A(e), and any guidelines or regulations approved by the Judicial Conference of the United States.

## XI. COMPENSATION

The CJA and the CJA Guidelines govern the compensation of counsel appointed under the CJA. Subject to the provisions and limitations of the CJA, the responsibility to fix the compensation and reimbursement paid to CJA counsel falls to the court before which counsel provided representation in a given matter. *See* 18 U.S.C. § 3006A(d)(5). The CJA Guidelines indicate a requirement of prior notice to and a response opportunity by counsel before any reduction of a compensation voucher under the CJA. *See* GUIDE TO JUDICIARY POLICIES AND PRACTICES, Vol. VII, Chap. 2, ¶ 2.22E.

Payment of fees and expenses to counsel appointed under this Plan, and payment for investigative, expert, and other services incurred, shall be made in accordance with any

statutory limitations and such rules, regulations, and guidelines as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts. No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a person, unless such payment is approved by order of court. Payment in excess of any maximum amount provided by statute or otherwise may be made for extended or complex representation, whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the Chief Judge of the Sixth Circuit or the Chief Judge's designee.

Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form to the office of the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines and, if the claim is correct in form, shall forward the claim form for the consideration of the appropriate judicial officer or the judicial officer's designee. After review of any submissions by appointed counsel and the completion of any other steps deemed appropriate by the Court, the judicial officer shall take action on the voucher, consistent with this Plan, the CJA, and the interests of justice.

## XII. EFFECTIVE DATE

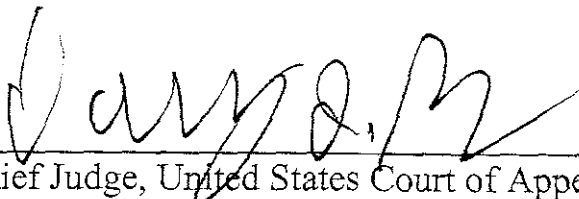
This Plan, dated this 20<sup>th</sup> day of September, 2007, shall take effect when approved by the Judicial Council of the Sixth Circuit. This Plan supersedes all prior Criminal Justice Act plans of this Court, with the exception of the "Addendum to the Plan for the Implementation of the Criminal Justice Act of 1964, As Amended, 18 U.S.C. § 3006A," dated 7/1/88, and approved by the

Sixth Circuit Judicial Council on 7/6/88 (and a 1992 addendum to said 1988 addendum concerning federal capital cases) dealing with the representation of death row inmates seeking federal habeas corpus relief. Prior addenda remain in full force and effect.

4/20/07 Joseph M. Hood  
Hon. Joseph M. Hood  
Chief United States District Judge

JUDICIAL COUNCIL OF THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

The attached Criminal Justice Act Plan, dated, September 20, 2007, of the  
United States District Court, Eastern District of Kentucky, is approved by the  
Sixth Circuit Judicial Council, this 7<sup>th</sup> day of NOVEMBER, 2007.

  
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Chief Judge, United States Court of Appeals  
for the Sixth Circuit